

State of Missouri

Office of Secretary of State

Case No. AP-11-21

IN THE MATTER OF:

DAVID C. GRAMMER;
JANA BAXTER;
Both d/b/a BOYDOPLEX,

Respondents.

FINAL ORDER TO CEASE AND DESIST AND ORDER IMPOSING CIVIL PENALTIES AND AWARDING RESTITUTION AND COSTS

On June 7, 2012, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State ("Enforcement Section"), through Assistant Commissioner Mary S. Hosmer, submitted a Petition for Final Order to Cease and Desist and Payment of Restitution, Civil Penalties, and Costs as to all Respondents (the "Petition"). After reviewing the Petition, the Commissioner issues the following findings of facts, conclusion of law and order:

PROCEDURAL BACKGROUND

1. On May 23, 2011, Ms. Hosmer submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed (the "C&D Petition") in the above-styled matter.
2. On May 31, 2011, the Commissioner issued an Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed against Respondents (the "C&D Order").
3. On June 1, 2011, a representative of the Commissioner mailed a copy of the C&D Order to Sheriff Robert Dawson of the Macon County Sheriff's Office in Macon, Missouri, requesting that the copy of the C&D Order be personally served upon Respondent David Grammer ("Grammer") at 1902 West Shore Drive, Macon, Missouri 63552. On June 8, 2011, the Missouri Securities Division received the completed "Sheriff's Return of Service - Cease and Desist Order" acknowledging that on June 3, 2011, the Macon County Sheriff's Office personally served Grammer by delivering a copy of the C&D Order to David C. Grammer.
4. On June 1, 2011, a representative of the Commissioner mailed a copy of the C&D Order to Sheriff Dwayne Carey of the Boone County Sheriff's Office in Columbia, Missouri, requesting that the copy of the C&D Order be personally served upon

Respondent Jana Baxter ("Baxter") at 3222 Jenne Hill Drive, Columbia, Missouri 65202. On June 10, 2011, the Missouri Securities Division received the completed "Sheriff's Return of Service - Cease and Desist Order" acknowledging that on June 6, 2011, the Boone County Sheriff's Office personally served Baxter by delivering a copy of the C&D Order to Jana Baxter.

5. On July 1, 2011, an attorney representing Respondent Grammer, Fredrich Cruse, submitted a Request for Hearing.
6. Respondent Baxter failed to request a hearing within the time allowed by Section 409.6-604, RSMo. (Cum. Supp. 2011).
7. On July 13, 2011, the Commissioner set a hearing on the C&D Order for October 7, 2011, and set a prehearing conference for August 23, 2011.
8. On August 23, 2011, the Commissioner held a prehearing conference in this matter. Ms. Hosmer, Mr. Cruse, and Respondent Grammer participated in the prehearing conference. Respondent Baxter did not participate in this prehearing conference.
9. During the prehearing conference, Ms. Hosmer and Mr. Cruse requested a continuance of the hearing on the C&D Order.
10. On August 31, 2011, the Commissioner continued the hearing in this matter to January 25, 2012.
11. On January 24, 2012, Mr. Cruse submitted, among other things, a Motion to Continue the January 25, 2012 hearing on the C&D Order.
12. On January 25, 2012, the Commissioner continued the hearing in this matter to May 14, 2012.
13. On May 9, 2012, Mr. Cruse submitted a Withdrawal of Request for Formal Hearing on Petition to Cease and Desist on behalf of Grammer.
14. In the Petition, the Enforcement Section requested a final order to cease and desist.
15. In the Petition, the Enforcement Section requested that the Commissioner issue an order requiring Respondent Grammer and Respondent Baxter jointly and severally to pay restitution in the amount of three million two hundred nine thousand one hundred thirty nine dollars and sixty four cents (\$3,209,139.64).
16. In the Petition, the Enforcement Section requested that the Commissioner issue an order imposing a civil penalty in the amount of ten thousand dollars (\$10,000) against each of Respondent Grammer and Respondent Baxter for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2011).
17. In the Petition, the Enforcement Section requested that the Commissioner issue an order imposing a civil penalty in the amount of ten thousand dollars (\$10,000) against each of Respondent Grammer and Respondent Baxter for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2011).
18. In the Petition, the Enforcement Section requested that the Commissioner issue an

order imposing a civil penalty in the amount of ten thousand dollars (\$10,000) against each of Respondent Grammer and Respondent Baxter for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2011).

19. In the Petition, the Enforcement Section requested that the Commissioner issue an order imposing a civil penalty in the amount of ten thousand dollars (\$10,000) against each of Respondent Grammer and Respondent Baxter for multiple violations of Section 409.5-505, RSMo. (Cum. Supp. 2011).
20. In the Petition, the Enforcement Section request that the Commissioner issue an order requiring each of Respondent Grammer and Respondent Baxter, jointly and severally, to pay the costs of the investigation in this matter in the amount of thirty thousand sixty seven dollars and seventy six cents (\$30,067.76).

FINDINGS OF FACT

21. The Commissioner adopts and incorporates the Findings of Fact, paragraphs 1 - 73, in the C&D Order.

CONCLUSION OF LAW

22. The Commissioner adopts and incorporates the Conclusions of Law, paragraphs 85 - 116, in the C&D Order.
23. This Order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003.

ORDER

NOW, THEREFORE, it is hereby **ORDERED** that:

- A. The Cease and Desist Order entered in Case Number AP-11-21 on May 31, 2011, is **FINAL**.
- B. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), Respondent Grammer and Respondent Baxter shall pay restitution to the investors identified as MR1 and MR2 in the C&D Order, and by Missouri Resident Identification Numbers MR01 and MR02 on the Amended Exhibit A to the Petition, in the amount of one hundred ninety thousand dollars (\$190,000), and interest calculated at the rate of eight percent (8%) per year from the date of the violation causing the loss, totaling one hundred six thousand four hundred dollars (\$106,400), arising from violations of Sections 409.3-301, 409.4-402 and 409.5-501, RSMo. (Cum. Supp. 2011). These amounts, which total two hundred ninety six thousand four hundred dollars (\$296,400), shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and the Commissioner will take reasonable and necessary actions to distribute such funds to MR1 and MR2, also identified by Missouri Resident Identification Numbers MR01 and MR02 on the Amended Exhibit A to the Petition. Respondent Grammer and Respondent Baxter shall be jointly and severally liable for these amounts. These amounts shall be paid by Respondent Grammer and Respondent Baxter within thirty (30) days of the date of this Order. Respondent Grammer and Respondent Baxter shall deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

- C. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), Respondent Grammer shall pay restitution to the investor identified as MR3 in the C&D Order, and by Missouri Resident Identification Number MR03 on the Amended Exhibit A to the Petition, in the amount of fourteen thousand five hundred dollars (\$14,500), and interest calculated at the rate of eight percent (8%) per year from the date of the violation causing the loss, totaling four thousand six hundred forty dollars (\$4,640), arising from violations of Sections 409.3-301, 409.4-402 and 409.5-501, RSMo. (Cum. Supp. 2011). These amounts, which total nineteen thousand one hundred forty dollars (\$19,140), shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and the Commissioner will take reasonable and necessary actions to distribute such funds to MR3, also identified by Missouri Resident Identification Number MR03 on the Amended Exhibit A to the Petition. These amounts shall be paid by Respondent Grammer within thirty (30) days of the date of this Order. Respondent Grammer shall deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- D. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), Respondent Grammer shall pay restitution to the investor identified as MR4 in the C&D Order, and by Missouri Resident Identification Number MR04 on the Amended Exhibit A to the Petition, in the amount of forty one thousand and forty dollars (\$41,040), and interest calculated at the rate of eight percent (8%) per year from the date of the violation causing the loss, totaling thirteen thousand one hundred thirty two dollars and eighty cents (\$13,132.80), arising from violations of Sections 409.3-301, 409.4-402 and 409.5-501, RSMo. (Cum. Supp. 2011). These amounts, which total fifty four thousand one hundred seventy two dollars and eighty cents (\$54,172.80), shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and the Commissioner will take reasonable and necessary actions to distribute such funds to MR4, also identified by Missouri Resident Identification Number MR04 on the Amended Exhibit A to the Petition. These amounts shall be paid by Respondent Grammer within thirty (30) days of the date of this Order. Respondent Grammer shall deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- E. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), Respondent Grammer and Respondent Baxter shall pay restitution to the investors identified as MR5 and MR6 in the C&D Order, and by Missouri Resident Identification Numbers MR05 and MR06 on the Amended Exhibit A to the Petition, in the amount of seventy thousand dollars (\$70,000), and interest calculated at the rate of eight percent (8%) per year from the date of the violation causing the loss, totaling sixteen thousand eight hundred dollars (\$16,800), arising from violations of Sections 409.3-301, 409.4-402 and 409.5-501, RSMo. (Cum. Supp. 2011). These amounts, which total eighty six thousand eight hundred dollars (\$86,800), shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and the Commissioner will take reasonable and necessary actions to distribute such funds to MR5 and MR6, also identified by Missouri Resident Identification Numbers MR05 and MR06 on the Amended Exhibit A to the Petition. Respondent Grammer and Respondent Baxter shall be jointly and severally liable for these amounts. These amounts shall be paid by Respondent Grammer and Respondent Baxter within thirty (30) days of the date of this Order. Respondent Grammer and Respondent Baxter shall deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

- F. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), Respondent Grammer and Respondent Baxter shall pay restitution to the investors identified by Missouri Resident Identification Numbers MR07, MR08, MR09, MR10, MR11, MR12, MR13, MR14, MR15, MR16, MR17, MR18, MR19, MR20, MR21, MR22, MR23, MR24, MR25, MR26, MR27, MR28, MR29, MR30, MR31, MR32, MR33, MR34, MR35, MR36, MR37, MR38, MR39, MR40, MR41, and MR42 on the Amended Exhibit A to the Petition, in the amount of one million nine hundred eighteen thousand two hundred eighty three dollars (\$1,918,283), and interest calculated at the rate of eight percent (8%) per year from the date of the violations causing the loss, totaling eight hundred thirty four thousand three hundred forty three dollars and eighty four cents (\$834,343.84), arising from violations of Sections 409.3-301, 409.4-402(a), and 409.5-501, RSMo. (Cum. Supp. 2011). These amounts, which total two million seven hundred fifty two thousand six hundred twenty six dollars and eighty four cents (\$2,752,626.84), shall be made payable to the Missouri Secretary of State's Investor Restitution Fund and the Commissioner will take reasonable and necessary actions to distribute such funds to the investors identified by Missouri Resident Identification Numbers MR07, MR08, MR09, MR10, MR11, MR12, MR13, MR14, MR15, MR16, MR17, MR18, MR19, MR20, MR21, MR22, MR23, MR24, MR25, MR26, MR27, MR28, MR29, MR30, MR31, MR32, MR33, MR34, MR35, MR36, MR37, MR38, MR39, MR40, MR41, and MR42 on the Amended Exhibit A of the Petition. Respondent Grammer and Respondent Baxter shall be jointly and severally liable for these amounts. These amounts shall be paid by Respondent Grammer and Respondent Baxter within thirty (30) days of the date of this Order. Respondent Grammer and Respondent Baxter shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- G. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Grammer shall pay a civil penalty in the amount of six thousand dollars (\$6,000) to the State of Missouri for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Grammer shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- H. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Baxter shall pay a civil penalty in the amount of four thousand dollars (\$4,000) to the State of Missouri for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Baxter shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- I. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Grammer shall pay a civil penalty in the amount of three thousand dollars (\$3,000) to the State of Missouri for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these

funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Grammer shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

- J. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Baxter shall pay a civil penalty in the amount of two thousand dollars (\$2,000) to the State of Missouri for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Baxter shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- K. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Grammer shall pay a civil penalty in the amount of ten thousand dollars (\$10,000) to the State of Missouri for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Grammer shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- L. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Baxter shall pay a civil penalty in the amount of ten thousand dollars (\$10,000) to the State of Missouri for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Baxter shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- M. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Grammer shall pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) to the State of Missouri for multiple violations of Section 409.5-505, RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondent Grammer shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.
- N. Pursuant to Section 409.6-604(d), RSMo. (Cum Supp. 2011), Respondent Baxter shall pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) to the State of Missouri for multiple violations of Section 409.5-505, RSMo. (Cum. Supp. 2011). This amount shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school

funds as provided in Article IX, Section 7 of the Constitution of Missouri.
Respondent Baxter shall deliver this payment to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

- O. Pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2011), Respondent Grammer and Respondent Baxter shall pay the additional sum of thirty thousand sixty-seven dollars and seventy-six cents (\$30,067.76) as reimbursement for the costs of the investigation and administration in this matter. Respondent Grammer and Respondent Baxter shall be jointly and severally liable for this amount. This amount shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and paid within thirty (30) days of the date of this Order. Respondent Grammer and Respondent Baxter shall deliver this payment to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65102.
- P. Pursuant to Section 409.6-604(f), RSMo. (Cum. Supp. 2011), this matter shall be referred to the Missouri Attorney General's Office to collect the restitution, penalties and costs described in this Order, as necessary. In the event of such referral, priority in collection shall be given to recovery of monies for the restitution and interest ordered under paragraphs B, C, D, E, and F, above. In the event that any collection efforts by the Missouri Attorney General's office fail to result in the immediate full recovery of funds necessary to cover and satisfy fully all ordered restitution and interest, all partial recoveries from Respondent Grammer shall be paid on a pro rata basis to the investors identified in paragraphs B, C, D, E, and F, above, based upon their percentage of the total restitution and interest Respondent Grammer is ordered to pay in paragraphs B, C, D, E, and F, above. In the event that any collection efforts by the Missouri Attorney General's office fail to result in the immediate full recovery of funds necessary to cover and satisfy fully all ordered restitution and interest, all partial recoveries from Respondent Baxter shall be paid on a pro rata basis to the investors identified in paragraphs B, E, and F, above, based upon their percentage of the total restitution and interest Respondent Baxter is ordered to pay in paragraphs B, E, and F, above. Once such collection efforts result in the full satisfaction of paragraph B, C, D, E, and F, priority shall be given to recovery of monies for the civil penalties ordered under paragraphs G, H, I, J, K, L, M, and N, above.
- Q. Respondent Grammer and Respondent Baxter shall pay their own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 3RD DAY OF JULY, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2012, a copy of the foregoing Final Order to Cease and Desist in the above styled case **was mailed by U.S. mail to:**

Fredrich Cruse
718 Broadway
PO Box 914
Hannibal, Missouri 63401
ATTORNEY FOR RESPONDENT
DAVID C. GRAMMER

and by certified mail, return receipt requested to:

Jana Baxter
3222 Jenne Hill Drive
Columbia, Missouri 65202

and via-hand delivery to:

Mary S. Hosmer
Assistant Commissioner
Missouri Securities Division

John Hale, Specialist